

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TEXTRON INNOVATIONS INC.,)
)
)
Plaintiff,)
)
) C. A. No. 05-486 (GMS)
v.)
)
) **JURY TRIAL DEMANDED**
THE TORO COMPANY,)
)
Defendant.)

**SECOND DECLARATION OF DAVID S. KLIS IN SUPPORT OF
TORO'S REPLY TO TEXTRON'S BRIEF IN
OPPOSITION TO MOTION TO TRANSFER VENUE**

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Dated: September 7, 2005

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TEXTRON INNOVATIONS, INC.,)	
Plaintiff,)	CIVIL ACTION NO. 05-486 (GMS)
v.)	
THE TORO COMPANY,)	
Defendant.)	

SECOND DECLARATION OF DAVID S. KLIS

I, David S. Klis, declare as follows:

1. My name is David S. Klis. I am the Director of Technical Operations of the Commercial Division for The Toro Company ("Toro"), located at 8111 Lyndale Ave. S., Bloomington, Minnesota 55420. I am 56 years of age. The facts stated herein are based on my own personal knowledge, and if called at trial, I could and would testify competently as to those facts.
2. My residence is located at 16710 45th Ave. N., Plymouth, Minnesota 55446.
3. I have been an employee of Toro for about 31 years. I have fairly extensive knowledge about Toro generally, the research and development of its products, its facilities, the sales and marketing of its products, and the people who worked in these areas.
4. I have held this position of Director of Technical Operations of the Commercial Division since about 2000. James R. Swindal was the Managing Director of Technical Operations of the Commercial Division prior to me taking on that position.

5. As the Director of Technical Operations of the Commercial Division I have responsibilities for research, development, and ongoing engineering support for new and existing commercial turf-maintenance products, which include Toro's Groundsmaster 3500-D, 4500-D, and 4700-D products (hereinafter "Groundsmaster products") and their predecessors. It is my understanding that these are among the principal products Textron Innovations, Inc. is accusing of patent infringement in this case.
6. I have personal knowledge as to who worked on the research, development, and testing of Toro's Groundsmaster products. In fact, I have managed these people since I became the Director of Technical Operations of the Commercial Division in 2000.
7. James Swindal is the most knowledgeable person, from an overall management perspective for research, design, and development, including, but not limited to, scheduling, budgeting, product cost, and resources for the earliest versions of the Groundsmaster products. Mr. Swindal was in charge, from an overall management perspective, of those Groundsmaster products from their inception to just prior to production. He is more knowledgeable than any current Toro employee regarding the Groundsmaster product's concept and feasibility stages, modeling, research, development, and engineering, from an overall management perspective.
8. Daniel Treu is the most knowledgeable person regarding the testing and evaluation of both the tractor and the cutting units of the Groundmaster products, from a grass cutting and performance perspective. I believe he is more knowledgeable than any current Toro employee regarding the Groundsmaster products' testing, evaluation, and performance of both the Groundsmaster tractors and cutting units.

9. Dwaine Berger has first hand knowledge regarding the construction and modification of the prototype that led to the Groundsmaster products. Mr. Berger is likely the most knowledgeable person regarding the actual construction of the prototypes and modifications made to them. I do not believe that there is anyone at Toro that is as knowledgeable as Mr. Berger related to the construction and modification of the prototypes that led to the Groundsmaster products.
10. I understand that on August 15, 2005, Toro filed a complaint against Textron, Inc.; Jacobsen, A Textron Company; and Textron Innovation, Inc. in the United States District Court for the District of Minnesota alleging that at least Textron's Groom Master II infringes two of Toro's U.S. Patent Nos. 5,533,325 and 5,715,664 ("the '325 patent" and "the '644 patent") for a hydraulic drive system. Toro's Groundsmaster 3500-D product also uses the hydraulic drive system disclosed in the '325 and '664 patents. At least one of the inventors of Toro's '325 and '644 patents managed the Advance Engineering Department responsible for transitioning the Groundsmaster products development to production.
11. As early as the 2004 Golf Course Superintendents Association of America ("GCSAA") trade show, Textron represented that the AR3 products use a series/parallel hydraulic drive system. I understand that this is the same hydraulic drive system as in Textron's Groom Master II product, which Toro accuses of infringing the '325 and '644 patents. I also understand that Textron's AR3 mower is one of the commercial embodiments covered by the patents Textron is asserting against Toro in the Delaware action.

Toro's Groundsmaster products and Textron's AR3 are competing rotary mowers.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 6th day of September 2005.

David S. Klis

David S. Klis

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CERTIFICATE OF SERVICE

I, Richard L. Horwitz, hereby certify that on September 7, 2005, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

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I hereby certify that on September 7, 2005, I have Federal Expressed the documents to the following non-registered participants:

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/s/ Richard L. Horwitz

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